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ABSTRACT

The evolution and role of the lay board of control (trustees, directors) of higher educational institutions and the part the board has played or may play in maintaining diversity in the American system are examined. The evolution of the lay board in the United States and in the United Kingdom is described. The lay board has become "the American mechanism for bridging public accountability and the professional autonomy of academicians." The use of the lay board provides a means whereby special interest groups might establish educational institutions. The single board of control provides the means for maintaining individual identity and independence as expressions of decentralization, corporate pride, competition, and breadth of choice. The shift from the strong board to the strong college president and administrative staffs has resulted in a difficult position for the lay board. Problems result for the board as the college's purposes become more encompassing and functions more diffuse. The board is under the law of the institution and must be accountable to the public, but the board is also the instrument whereby the public makes its concerns known to the institution. Changes affecting American higher education and the role of the lay board include the growth of statewide governing and coordinating boards and the presence of a collective bargaining unit. (SW)

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POLITICS OF DECISION MAKING

IN RELATION TO EDUCATION IN COMPARATIVE PERSPECTIVE

UNITY AND DIVERSITY AS A PROBLEM

Centralization and Decentralization in Decision Making:

The Lay Board of Control

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While American writers may debate the proposition that diversity is still, or will continue to be, a dominant characteristic of higher education in the United States, comparatively speaking the system of 3,000 postsecondary institutions under a wide range of governance arrangements, attracting students in the hundreds on some campuses and in the thousands on others, and offering an incredible range of "college credit" courses, gives the impression of being diverse and disorderly. One writer refers to it as a deviant system, one that has evolved without planning and with a "bit of basic good luck."¹ It is a system that appears to maintain a degree of autonomy, "its own social and cultural world," and yet one that remains responsive to its society and supplies "very varied and rapidly changing demands in general education, vocational training and scientific discovery."²

Leaving to other judgment whether what has happened in the emergence of the American system is "a bit of basic good luck," and whether the deviancy is more a matter of degree than of form, I propose that we examine what has sometimes been represented as one of the more critical elements

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in promoting this deviant and disorderly system, the lay board of control (trustees, directors), and begin to explore the part it may have played or may in the future be able to play in maintaining diversity in the American system.

Vesting control of the destiny of higher educational institutions in a small group of lay persons has been characteristic of the American higher educational enterprise from early in its history. Martorana even refers to the lay board as "the American idea" and contends that the degree of decentralized and delegated power of control represented in the board is to be found in no other nation.

The practice in the United States is strikingly different from that in other nations not only in the high decentralization of authority for higher education, but in the fact that the holders of that authority are laymen. The large majority of individual members of these boards are not professionally engaged in the business of higher education.³

He continues by suggesting that lodging control of higher educational institutions in such boards is both the source of much of the strength, and, paradoxically, much of the weakness of American higher education.

Evolution of the Lay Board in the United States

When the Great and General Court of Massachusetts Bay determined to establish an institution of learning in a settlement that was less than ten years old and in a place that had been wilderness eight years before, it could turn to no group of scholars already in existence and confer upon them recognition as the school or college of the colony. Instead, the community had to begin de novo, without scholars, without students, without buildings and without much more than a pious hope. But as Morison observes, the conception of the nature of the church which

the Bay colonists embraced required that they have ready access to an educated ministry for "there was nothing more dangerous and detestable, in the eyes of Orthodox Puritans, than an unlearned preacher presuming to interpret Scripture out of his own head."⁴ The only way to begin was with the appointment of a committee to oversee the establishment of a school.

A full year intervened between the act of foundation on October 28, 1636 and the appointment of the committee to oversee the establishment of the new institution. On November 20, 1637 the Court appointed a committee to take the necessary actions to establish the institution; in the meantime, New Towne, now Cambridge, had been selected as the site for the college. Then, in 1642, four days after the first commencement, the Board of Overseers was placed on a permanent basis. The charter of 1650 created in addition a Corporation of the President and Fellows, to be responsible to the Overseers, but with certain broad powers in its own right; the Overseers were not supposed to initiate anything with regard to the institution, but they were to serve to safeguard the interests of the Commonwealth and the churches and to prevent the President and Fellows from undertaking any unwise action. The creation of the Corporation was in response to Henry Dunster's petition for greater recognition of the institution and was a compromise of sorts, a way of including to a limited degree the form of government that had characterized the English residential colleges and at the same time to insure control by the officials of the colony. In the early years the Fellows were also the tutors at the institution, but by 1707 it had become the practice to appoint tutors who were not at the same time Fellows, and by 1780 the Corporation had become entirely non-resident.

Harvard College began with a lay board, attempted to combine the concept with a self-governing board of academics, and ultimately accepted a dual lay board. The experience of the second colonial college was similar in many respects. The royal charter which created William and Mary College in Virginia in 1693 provided for a self-perpetuating Board of Visitors of 18 persons with the power to appoint a president, masters, and to make rules and statutes. The charter also provided that the president and professors should constitute a "Body Corporate," and that as soon as the institution was firmly established, the trustees were to transfer their entire endowment to the president and professors. The later statutes of 1727 placed "the ordinary government with the "president and six masters", and from 1729 to about 1755, the president and masters probably enjoyed more self government than did the faculty of any other early American college, but following the Revolution, in 1790 court action reaffirmed the powers of the Visitors and their right to remove professors.⁵ Again, the lay board became the means for establishing an institution, a later effort was made to give the president and faculty complete autonomy, but ultimately the position of the lay board was reaffirmed.

The impetus for the establishment of the first two colleges came from the governing body of a colony. The impetus for the third college, Yale, came when 10 of the principal ministers of the colony were constituted as trustees for the founding and governing of a collegiate institution. It was this group that requested a charter of the General Assembly of the colony, and when the act for the establishment of the Collegiate School was passed in 1701, the governance was placed in the hands of a self-perpetuating lay board. Thus, it was only in the third attempt that the pattern which was to become most common in the governance of American

higher educational institutions emerged. Similarly, Princeton, the fourth of the colleges was established through the repeated efforts of a special interest group, the "New Light" Presbyterians in the colony of New Jersey. Each of the remaining five American colleges in the colonial period grew out of the efforts of special interest groups.

But the lay board as the instrument for governing American higher institutions was still evolving. The American Revolution had a profound impact on all aspects of the life of the emerging nation, not least upon education. With independence and the creation of a Federal Government, new questions arose about the institutional forms of higher education.

Should education be left in the hands of the sects? Should the state which had already begun to enlarge their roles as sponsors of education in the age of revolt against established churches make themselves the primary and sole agents promoting colleges? Should the new Federal Union create its own university as a standard setter and cultural center?⁶

Three approaches were taken in the late 18th and early 19th centuries:

(1) there was a move on the part of the Federal government to become directly involved in establishing institutions; (2) a number of individual states initiated efforts to establish their own institutions; (3) some of the states attempted to take control of existing privately established institutions. James Madison proposed early in the Constitutional Convention that one of the specific powers of the new legislature be to establish a national postgraduate institution for training civil servants.⁷ Although the idea was never adopted, it recurred throughout the nation's history, even well into the 1900s. On the second front, North Carolina (1789), Georgia (1785), Tennessee (1794) and Vermont (1791) established state-chartered and state-supported institutions before 1800. These new institutions, however, soon took on the characteristics of independent corpora-

tions, calling in large part on private funds and upon trustees who acted as self-perpetuating boards. Only decades later and largely after 1862 did state systems as such emerge in the United States. In the meantime on the third front, Yale, the College of Philadelphia (University of Pennsylvania), King's College (Columbia), Harvard, William and Mary, and particularly Dartmouth, faced efforts on the part of state legislatures to reestablish them as state foundations. The Dartmouth College Case, brought by Daniel Webster before the United States Supreme Court, finally established the principle that a board of trustees was the legal entity responsible for the maintenance of the college--and placed in U.S. law the position that a board of trustees was a private corporation and the charter was a contract between the institution and the state.

That the lay board of control became the established mode for founding, maintaining and governing higher education in the United States was the result of a long process rather than a sudden invention the preceeding brief historical review should make clear. That the board has become "the American mechanism for bridging public accountability and the professional autonomy of academicians" is probably also clear.⁷ But in this process the lay board of control is for American higher educational institutions more properly the material than the efficient cause. The use of the lay board provided a means whereby special interest groups might establish educational institutions. These special interest groups had their own motivations for bringing institutions into existence, whether to protect and promote a particular religious point of view, promote local community pride, or respond to perceived educational needs, and the interest groups constitute the efficient cause, the determining or propelling and

active force. The lay board provided the means for identifying the institution and, as precedent after precedent established the principle, the means for giving the institution legal status.

American higher education has been characterized in terms of decentralization of academic power, development of corporate pride and initiative, competitiveness, and the provision of wide choice to students.⁸ American society began with a fierce intent to maintain decentralization of power; it was a bit of a task to muster enough support from the several states, former colonies, to adopt a Constitution, and it took a Civil War to maintain a sense of federal union. The corporate pride and initiative seem to be the free enterprise system expressing itself. Competitiveness is the force that led to the founding of new institutions and is exhibited in scores of ways by ratings and rankings between states and within states and across the nation, whether it be expressed in the demand for the tax dollars within the states or in attempting to demonstrate status among graduate programs, or in attracting larger number of students. The pricing policy--students must pay a portion of the costs--as well as the sense of service lead to providing broad choice for the students; the principle of survival is to provide what the students want and/or what society seems to need. Through all of this development the single board of control provides the means for maintaining individual identity and independence as expressions of decentralization, corporate pride, competition and breadth of choice.

The Lay Board in the United Kingdom

But, while in the United States the lay board of control may have become the means for expressing an independence and to have facilitated the development of diverse system, to claim it as a peculiarly American invention is going beyond the facts. Brubacher and Rudy note the impact of the Protestant Reformation upon the governance of the Scottish universities. At the University of Edinburgh, established in 1582, the government was in the hands of the town council.⁹ This council set down in some detail the rules for the conduct of teachers and students, although it delegated to the principal the day-to-day activities. But Cowley contends that the Scottish universities copied the idea of lay involvement from the Dutch, who in turn had adopted it from the Italian universities where after the Middle Ages student power was broken as the civil authorities took over the control by appointing lay bodies as governors of both professors and students, what we might in the present day call boards of trustees.¹⁰

While in the United Kingdom Oxford and Cambridge have by virtue of their collegial structure and long tradition maintained control by the Masters, subject in matters of the statutes to the Convocation (Oxford) or Senate (Cambridge), the newer universities, those established after London and Durham, began as essentially private or local enterprises and were initially heavily dependent upon the lay constituency.

Higher education in the industrial cities of Victorian England began as private enterprise, financed by a joint stock company, as was University College, London; or by individual benefactors, as were Owens College, Manchester, and Mason College, Birmingham; or by groups of citizens, as were the colleges in Leeds and Liverpool.¹¹

Understandably, the trustees for the funds maintained for the institutions

acted as governing bodies, and began by regarding the professors as employees, and they took it as their responsibility as trustees "to decide policy in the colleges they governed."¹²

With the establishment of the institution and the appointment of professors, however, a two-way struggle began. On the one hand there were the laymen founders, "determined to shape the university in their own image of what a university should be," and on the other hand there were the foundation-professors, graduates of older universities, "determined to establish in the new university the tradition of autonomy so jealously preserved in the institutions from which they had come."¹³ The result was the emergence of a two-tier system of university government, with the supreme control in the predominantly lay governing body, the Council, which controls finance and property, and the academic body, the Senate, whose decisions are submitted to the Council for ratification.

Over time, by convention and by statute the Senate has come to assume responsibility for the basic academic functioning of the university, and this responsibility is now so firmly established that "it is regarded as an inalienable right, that on all academic matters initiative lies with the academic staff" so that today, if the lay Council were to issue an instruction to the Senate, there would be "massive obstruction, a dragging of feet, and even murmurs about infringement of academic freedom, notwithstanding charters and statutes which unambiguously confer sovereignty on the lay council."¹⁴

In some respects, the Redbrick and newer universities have had potentially the same input from lay board members as would be the case of the American universities. But over the years, in the United Kingdom the influence of the academic community has increased and that of the lay

members of the university governing boards has decreased. Currently the role of representing the public interest has been largely taken over by central authorities through the Department of Education and Science and the University Grants Committee.¹⁵

The Lay Board in the United States
and Institutional Control in the Future

The lay board, with few exceptions, exerted unlimited control among the nine American colonial colleges. Reinforced by the Supreme Court decision in the Dartmouth College Case in 1819, the power of the lay board continued largely unchallenged well into the latter half of the 19th century. Yet, while members of the boards almost constantly injected themselves into the administration of the colleges, the fact that as laymen they were not in constant attendance at the institution led in time to the emergence of the president as the locus of power in the American college. In the struggles that developed between president and board, the office of president eventually emerged the victor. Brubacher and Rudy take note of the difficulties that Henry Tappan faced at the University of Michigan in the middle of the 19th century as the Regents insisted on modifying courses of instruction, shifting professorships, and even making purchases for the library without consulting the faculty. Tappan took the position that these matters were details of administration that should be left to the judgment of the professional staff. He finally lost his position over the conflict, but the principle was being established. President Bascom had much the same problem at the University of Wisconsin as did F.A.P. Barnard at Columbia.¹⁶

But the era of a strong president was beginning. In the late 1860s

and early 1870s persons such as Andrew D. White, Charles W. Eliot, and James D. Angell moved to the center of the stage.

Eliot and Angell, especially, represented a new style of worldly sophistication as far as academic executives were concerned. Their aggressiveness, their concern for budgets and public relations, their interest, for example, in the statistics of their establishments, set what was then an entirely new standard.¹⁷

The development of administration was carried forward in the 1890s with such men as William Rainey Harper of Chicago and Nicolas Murray Butler of Columbia. Administrative staffs emerged, and the day-to-day management of universities increased in complexity. The first American book wholly given to a discussion of "academic managership," was a volume entitled College Administration by C. F. Thwing and appeared in 1900.

With the emergence of strong administrators and strong administrative staffs, the role of the lay board of control in day-to-day operations began to decrease. Then the emergence of a professional faculty in American higher educational institutions in the early 1900s, the academic freedom debates, and the establishment of the AAUP in 1915 served further to increase the autonomy of the institutions. This is not to suggest that lay boards were powerless from 1915 forward. It is only that with the establishment of increasingly complex administrative structures and the emergence of a professionally aware and organized faculty, other forces were in play, and the university structure began to display a complicated arrangement of checks and balances. Faculty assumed more control and responsibility for curriculum and teaching. Administrators developed their own bureaucracy to maintain reasonable control of the fiscal and management aspects. Boards of control became sources for fund raising and derending the institution before the general public.

In the mid-1960s, Jencks and Riesman were prepared to dismiss lay

boards of control as significant factors in the determination of the character of American higher education. They concluded that colleges were not primarily shaped by the boards that formally control them, since they were much more alike than their boards.

Still less do we believe that the character of college depends on who appoints and regulates the board. Colleges are shaped by many interest groups. A few exercise their influence through representation on the board, but most do not.¹⁸

Another group of writers had come to a similar conclusion on the basis of their examination of the University of North Carolina in depth and of some forty other major universities in a series of field studies in college and university administration and organization.

Over the years, major changes have occurred in the practices of boards which have produced in the modern university a structure of power and authority that distinguishes it from other types of managed organization. A fundamental change took place about 1900, when most boards delegated all educational policy determination to the president of the faculty. The boards retained only legal control over curricular, admission and degree requirements, and faculty recruitment. And this control came to be viewed as a paper right or legal fiction.¹⁹

Henry Mason entitled his review of writings about governing boards, "The Reality of Limited Power vs. the Myth of Unlimited Sovereignty," and reported that while the board is "supreme" and "sovereign" in a legal sense, "the board interferes only sporadically with the university's decision making."²⁰

But there are those who in the early 1970s called for a reassertion of the power of lay boards. Perhaps in reaction to the disruption on American campuses in the 1960s, perhaps in response to an increasing mood in the general public to call for accountability, or perhaps out of concern for the financial plight of their institutions, some board members demanded more direct involvement in the affairs of institutions. John Budd has

accused the American college trustees of having betrayed their trust "by neglecting to live up to their powers and responsibilities," and said the system should be either "abandoned outright or drastically revived and restructured."²¹

Representatives at the meeting of the Association of Governing Boards in May, 1970, were even more direct in the appeal for a return of power to the board. At that particular meeting, there seemed to be "widespread agreement that the trustees should assume a bigger role in handling such issues as faculty workloads, tenure, and even the content of the curriculum." One speaker at the conference called for much more involvement in curriculum and faculty workloads, asked the trustees to become more accountable for what is happening within the institution and stated, "the very essence of the university is wrapped up in two phrases: 'what is taught' and 'how is it taught.'" He went on to say the trustees themselves must either exact accountability of the institutions or see to it that someone else does and reports back to the trustees.²²

The lay board of control occupies a difficult position among American colleges and universities in the latter quarter of the twentieth century, as the structure of American higher education has become more complex and less clearly defined.

As long as universities remained relatively small, insulated from society, concerned with a search for truth, the university was reasonably free to go its own way and develop whatever pattern of governance and management seemed appropriate. Today, as university structures move from unitary to complex and composite, and the university community becomes a megapolis, these old patterns are inappropriate.²³

Yet, paradoxically, the existence of the lay board as the legal entity identifying the university has probably given to the university the kind of autonomy that has allowed it to become more complex and less clearly

defined. The lay board is responsible for insuring that the institution fulfills its public purpose, but as the purpose becomes more encompassing and functions more diffuse, it is more difficult to define the particular constituency to which the institution is accountable. The lay board is legally the institution and is responsible for securing an administration and a faculty, but as both have become more professional, the identification, particularly on the part of the faculty, with a particular institution is less evident. The board is under law the institution and thus answerable to the public, but the board is also the instrument whereby the public makes its concerns known to the institution. The board has over time become "the American mechanism for bridging public accountability and the professional autonomy of academicians."²⁴ But, given the changing environment within which American higher education must operate, is the lay board capable of carrying on its historic function?

Factors in the changing environment include the growth of statewide governing and coordinating boards. In 1954 only four states reported coordinating boards, and some 13 had statewide governing boards. The majority of the states employed individual governing boards for each institution and no agency at the state level. By 1974 twenty states had single governing boards and 27 reported coordinating boards; only three had no statewide agency.²⁵ By 1976 only two states, Delaware and Vermont did not have some kind of coordinating or governing board; Nebraska had a voluntary coordinating agency, and both Nebraska and Vermont had studies recommending the creation of such boards. The authorization of statewide planning commissions under Federal legislation, the creation of the "1202 Commissions" called for the Higher Education Amendments of 1972 could only encourage the trend to create statewide agencies. As the statewide agencies

grow in power the individual lay board of control diminishes in power-- or disappears.

Other factors in the changing environment include: the growth of collective bargaining--by mid-1977 more than 540 postsecondary institutions were organized; the growing dependence on federal and state student aid funds; the increasing competition for funds between higher education and other social agencies--higher education may be losing the favored position it has held.

The full impact of these and other factors in the new environment upon the lay board is yet to be assessed, but the growth of statewide planning agencies (coordinating or governing) inevitably places limits on the freedom of action of the individual board. The presence of a collective bargaining unit appears to create more of an adversary relation between board and faculty. Greater dependence upon federal funding seems to bring regulations that further restrict freedom of action. Competition for funds brings more attention to the "marketing" mentality, and to programming that "pays off."

Prognosis

The lay board of control has provided American higher educational institutions with a large measure of individuality and autonomy. The manner in which the board has exercised its power has changed over the more than 300 year history of American higher education--from direct involvement until the early 1800s, to a period of conflict with the office of president which was growing in strength in the late 1800s and early 1900s, to a more passive stance in the mid-1900s, to some effort to reassert basic authority in the last quarter of the 1900s. The board itself may not have been the efficient cause in promoting diversity, but it has clearly been the material cause, the instrument affording the necessary status for special interest groups to establish and maintain an unusual range of higher educational institutions. But even as some boards may seek to reassert authority which is legally theirs, other forces are being brought to bear which clearly limit the autonomy of the individual board. The question becomes one of whether on balance American higher education can afford the diversity that has characterized it and whether lay boards can continue to maintain a historic role. If a large measure of diversity is desirable and if the lay board is to remain the means for maintaining institutional independence of action, the role of board membership is going to become even more demanding and boards themselves may need to reorganize with sufficient administrative resources to enable them to make informed decisions while maintaining the difficult balance between securing sufficient information for those decisions and preserving the autonomy and authority of administrative staff and faculty.

Notes

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⁴Samuel Eliot Morison, The Founding of Harvard College (Cambridge, Massachusetts: Harvard University Press, 1935), p. 160.

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⁶Hofstadter and Smith, op. cit., p. 147

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¹²Ibid.

¹³Ibid., p. 290

¹⁴Ibid., p. 299

¹⁵Sidney Caine, British Universities: Purpose and Prospects (Toronto: University of Toronto Press, 1969), p. 156.

¹⁶Brubacher and Rudy, op. cit., p. 369.

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- ¹⁸ Christopher Jencks and David Riesman, The Academic Revolution (New York: Doubleday and Company, 1968), p. 269.
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- ²³ Paul L. Dressel and William H. Faircy, Return to Responsibility (San Francisco: Jossey-Bass, Inc., 1972), p. 111.
- ²⁴ Burton Clark, op. cit., p. 32
- ²⁵ Larry Van Dyne, "The Changing Face of Governance in Public Higher Education," Compact, VIII (September/October, 1974), p. 9.

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